

EXHIBIT 3

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

MICROSOFT CORPORATION,)
Plaintiff,) 10-01823-JLR
v.) SEATTLE, WASHINGTON
MOTOROLA INC., et al,) November 19, 2012
Defendant.) TRIAL DAY 1

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE JAMES L. ROBART
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: Arthur Harrigan, Christopher Wion, David Pritikin and Andy Culbert

For the Defendants: Jesse Jenner, Ralph Palumbo, Mark Rowland, Philip McCune and Neill Taylor

1 Q I would like to turn to the facts of this case. Assuming
2 that there are at least 1,000 essential patents relevant to
3 each of the 802.11 and the H.264 standards, and at least 50
4 different patentholders, what is your opinion about whether
5 the ex ante approach is feasible in this case?

6 A That strict ex ante approach would be completely
7 infeasible in this case.

8 Q Now, turning to the opinions you expressed regarding the
9 views testified to by Microsoft's economist, Professor
10 Murphy, Professor Simcoe and Dr. Lynde, first, is the concept
11 of hold-up addressed in the economic literature?

12 A It is indeed.

13 Q What is the relationship between the RAND commitment and
14 the potential for hold-up?

15 A Well, in short form, the RAND commitment and the whole
16 apparatus exists to deal with hold-up.

17 Q How are RAND licenses typically established in practice?

18 A My understanding is they are typically -- not universally,
19 obviously, but typically established through bilateral
20 negotiation ex post, that is to say after a standard has been
21 established.

22 Q Assuming that SEP holders and standard implementers are
23 sophisticated parties, what is your opinion regarding
24 Microsoft's argument that all licenses negotiated ex post are
25 likely not to be RAND because the royalty includes hold-up